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696 The procedure to-day involved in witchcraft cases can be set into motion and those cases may be settled by district heads. In short, set rules as to competence do not exist and district heads are left to cope with as much as they can manage.

576 627 561 A brief discussion of some quasi-judicial processes will enable us to appreciate better, as it will introduce us to the procedure and spirit of the *khoro*. Firstly, there is the method by which especially old women deal with disrespectful or insulting behaviour of younger women. Should one or more young women play a practical joke upon or be disrespectful to an old woman, or playfully 'dance' an infant child, even their own, or prematurely try to make it sit up or walk or scold or beat it, in the presence of the grandmother or of an old woman, their behaviour is regarded as insulting. The conception is that old women in their role as midwives, rather than young mothers, have brought children into the world and the old, not the young, are the guardians of the babes. If one young woman arrogates to herself rights and privileges which belong to the old women, the latter are entitled to take suitable action. The insulted old woman reports to a few of her age-mates and in consultation they decide to punish the age-mates of the young woman resident in the same territorial unit—for example, a district. There is neither 'trial' nor tribunal. The punishment consists of three elements: the age-mates of the young women (say all those who have one baby) must brew beer with which to effect a reconciliation with the older women; in a rite accompanying the beer drink and resembling that used at initiations, the oldest woman cares her immediate junior, who in turn cares the next, and so on, including the culprits; and, finally, the culprits are read a lesson as to the iniquity of being disrespectful to their elders.

One day three young married women, in circumstances that implied disrespect, sent three old women a tiny quantity of snuff. The older women immediately fined the younger and vicariously all their age-mates living in the Christian settlement, for they were all residents there. They were told to grind snuff and restitute their wrong with beer. Five days later the twelve young married women of the settlement came to the house of the oldest woman, bringing large quantities of nuts, light beer, pumpkins, and other food; their husbands, in addition, sent a large tin of snuff and these 'gifts' were divided amongst the old women. Then followed the rite and the warning. On another occasion all the young mothers of a district were fined because one of them had 'danced' its baby in the presence of its grandmother. Likewise, it is said, though we have not seen a case, that the old women may fine a young father and his age-mates, if he forgets their privileges in regard to babies. But we cannot speak of regimental courts, the age-grades are not determined by the 'schools', the responsibility is territorial, and the punishment is 'beer of reconciliation' (largely replaced by food among Christians).

627 691 The second procedure, that called *ku khwaxina* (to beg pardon, to reconcile), has an enormous province and a profound significance, not only for legal arrangements, but in the whole culture. The procedure uses a *makhwanedi*, the emissary who intervenes on behalf of one of the parties to beg the pardon of the other. Its essence is not humiliation of

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the one, but bilateral reconciliation: thus people often talk of *ku khomc-* 627
jana, to beg pardon of one another, to become reconciled. If A., to whom 691
B. has lent her pot, breaks it, A. should send an old woman as conciliator (*makhomedi*) to express regret and to ask forgiveness. But the *makhomedi* figures in every conceivable kind of case, whether or not amenable to the courts: in homicide and adultery settled out of the *khoro*; in breaches of etiquette, such as bad behaviour of a bridegroom on his courtship visits, which cannot be submitted to the *khoro*; in disputes already before the *khoro*. It is not necessarily the wrongdoer, objectively considered, who should initiate the procedure: an illtreated wife who runs away to her parents must be sent back with a *makhomedi*. Nor will the *khoro* necessarily order the guilty party to *khomcana*: he who must beg pardon is the junior, or the person of inferior rank.

The great province of *ku khomcana* is in family and kinship disputes, only a small proportion of which ever reach the *khoro*. The group of people concerned as a family council is determined by cultural arrangements. A quarrel between a father and son of one of his wives is the immediate concern of that house alone; no one else, not even the father's brother or a co-wife, may intervene; but the cattle-linked sister who built the house with her cattle presides and 'cuts' the case. A brother of that sister may be called in, but it is not necessary, and in any case he may only advise if his opinion is asked. If the matter concerns a wider circle, others may be called in; it is impossible to lay down general rules, since on the one hand, each cultural complex (e.g. marriage or inheritance) implies a different set of interested persons and, on the other, each case has its peculiar aspects. The marriage of the daughter of a house is, as regards its obligation to a cattle-linked house, the concern primarily of that house, but if the daughter is to be married to a stranger the mistress of the cattle-linked house must be consulted. If co-wives quarrel, their differences are the concern of the houses concerned, but if one of the wives has bewitched the other, the husband is a mere spectator as regards the arrangements that may be made between the parents of the co-wives; and even in a *khoro* case, it is not the husband, but the parents who are the parties who may be ordered to *khomcana*.

Ku khomcana may be likened to compounding a wrong, but it clearly has much deeper significance: it may be ordered by the *khoro*, alone or in addition to restitution; and it is quite irrelevant whether the wrong is amenable to the court. There is no wrong that cannot be submitted to this procedure. Though theoretically 'A dog which eats another cannot grow fat' (*i.e.* a murderer must always be killed), *ku khomcana* is in practice always possible, for 'He who kills another kills his brother-in-law' (*i.e.* if the victim's kin agree, the homicide may be made good by a full *mayuadi* or a daughter or sister). In modern practice, most interesting cases have arisen. In one case some years ago the murderer, who had killed his victim for medicine, a heinous crime, offered his sister in marriage to the victim's elder brother; the investigation by the European authorities failed; and to-day there is a child of the marriage, and permanent links between victim and murderer because, on the pattern of

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bride and cattle exchanges, they have become cattle-linked kin. The handing over of a bride or of *mavyoxolo* may supplement the supposedly inadequate punishment meted out by European courts, or *ex in* substitution for the penalty such courts would have imposed if the parties had given away the facts. There is no payment to the queen, no trial, only *ku khumelwa*. The bride is not returned, as is reported in the case of other tribes, when she has borne a child in the lineage of the victim. In 1938, when the sons of A. and B. were herding together, A.'s son pushed a large rock which rolled over and accidentally killed B.'s son. A. sent a *makhamadi*, but B. refused to accept a mere apology; he wanted 'something to wipe away his tears'. Eventually he accepted four head of cattle, which were brought to the *khosi* of the district head and there handed to him. A little later A. demanded back his cattle, saying that he had lost too much and hoping that publicity would frighten B.; but A.'s object was defeated by a device which we cannot describe here except to say that it was as cunning as it was effective.

Ku khumelwa is the predominant procedure in the districts, and everywhere it is considered especially appropriate to adultery, damage to crops, and 'blood' cases or bodily assaults; it is often the only permissible procedure in family disputes; and it is praiseworthy in theft cases. It may involve an elaborate series of acts, to some features of which we may refer. In one case a wife had committed adultery, and when the husband, after the birth of the child, had discovered the identity of the adulterer, he sent his wife to him. The adulterer, as is customary when he admits his wrong, sent the wife back with the 'goat of [illicitly] meeting one another', which he had borrowed from a neighbour. The goat was killed and the husband gave his erring wife the back leg, the portion that really belonged to him, which was an unusual humiliation. The wife went to an old woman, who took her back to beg pardon on behalf of the wife and to say that the adulterer would later send a cow with his own *makhamadi*. The procedure in adultery or seduction is not rigid, but essentially the injured husband or the father sends a messenger to adulterer or seducer, who, if he admits the accusation, sends back his *makhamadi* with an offer of settlement; negotiations may continue for some time and the culprit may be let off lightly, in many cases only a goat being exacted, though, to avoid publicity, more than the usual compensation may be paid. In 'blood' cases *ku khumelwa* strikingly benefits both assailant and victim. In theft, the offender must offer the thing stolen plus a goat or even a head of cattle 'of causing [the thing] to come back'. Mudiwa, living at the capital, one day found that some of his pumpkins had been stolen in a field at Khikhoolini. A little later he met a woman who, caught with some pumpkin leaves as she came from the field, admitted her guilt. Mudiwa reported to the district head at Khikhoolini, who arranged that the parties met him at the woman's home to discuss the matter. There she offered a pig as pardon. Mudiwa accepted, told her to sell the pig and give him 10*s*. The proceedings were more or less private, those present being only Mudiwa, the woman and a relative or two, and the district head, in the role technically as judge, but really as *makhamadi*. If the matter had been between residents of the same district, the intervention

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of the district head would have been unnecessary; but very frequently he acts as *umbhoondi* in these cases.

Ho khomelwa is the only proper initial procedure in cases of damage to crops. The owner of the cattle is called to see the damage, begs pardon with a goat, and is told to strengthen his cattle kraal. If depredations continue, he may be taken to the *khoro*. To omit the preliminary procedure of *ho khomelwa* is not necessarily fatal, but is regarded as being revengeful and nothing is abhorred more than revenge. If the man whose crops are damaged refuses reconciliation and makes the owner of the cattle 'pay' instead of allowing *ho khomelwa*, the owner will, it is said, seek an opportunity to revenge himself, and the saying that applies is: 'It is the blow that follows, not the first blow, that hurts.' The saying is, however, of general application and is invoked in regard to any injury or wrong. Practice differs in the various districts as regards *ho khomelwa* for damage to crops, and when a man is resident in one district and has his fields in another, very interesting conflicts of jurisdiction and law sometimes occur, but we cannot stop to consider them.

After formal complaint—that is, after a case is 'in the *khoro*'—*ho khomelwa* may, according to the circumstances, either end the matter or be treated as a confession of guilt (*dumo molodo*) by plaintiff or *khoro*. *Dumo molodo* is a term used also outside the *khoro*. If the owner of cattle continues to be careless after several warnings, he may find that his goat of reconciliation will be regarded, not as a goat of begging pardon, but as a confession of guilt, and the victim will exact what he considers to be the real damage. To accept pardon stops *khoro* proceedings, and if after *dumo molodo* the culprit makes good what the victim demands there also can be no *khoro* trial; but if he does not, the offer of pardon is a confession, not conceived as having been made without prejudice, but admissible in evidence. More often *dumo molodo* refers to a goat which the defendant offers in the *khoro* in settlement and apology. The circumstances, especially the attitude of the plaintiff and the previous history of the case, will then determine whether the matter ends there. The *khoro* may say, 'This is your *dumo molodo*; now pay the ox which in our [or the plaintiff's] opinion fits the offence.'

Examples of *dumo molodo* are difficult to give as a long history is involved and, to understand them, we should have to refer to details of the culture which are not dealt with in this book. But it may be possible to simplify for presentation here the case of *Mabula* v. *Magwaba*, though it lasted six months in the *khoro* of the capital alone. These two women were co-wives of Khidzi and were entangled in one of those polygons of jealousies arising in polygyny which are the counterpart of the eternal triangles of our monogamy. The co-wives quarrelled and fought about their extra-marital lovers, and Magwaba bit Mabula on the lip. When the wound refused to yield to treatment it was said to be due to the 'bad teeth' of Magwaba, who, it was suspected, must be a *lokoga*, a person who had been allowed to live though her upper teeth had appeared before the lower. Having vainly appealed to her husband to order Magwaba's teeth to be scraped for medicine, Mabula complained to her parents. After much manœuvring in order to avoid being drawn into the conflict,

627 the mother and the brother of Mabula went to the parents of Magauba,
691 who, however, refused to allow the scraping of their daughter's teeth on the grounds that it implied that they were witches.

When the matter came before the *khoro*, the view was taken that, 'If a dog bites you and the wound festers, it is not wrong to ask the owner for a hair from its tail': you are not imputing witchcraft and it does not matter that the hair or scrapings may have no healing virtues, the important matter being willingness to help. Many side issues emerged, especially as to whose responsibility was the scraping of the teeth: the husband's or the parent's. Once Mukugubvi, Magauba's father, by escaping from his village, evaded the attempt made by Mabula's elder sister to scrape Magauba's teeth. There were at times recriminations in the *khoro*, which showed that the *mayenzulo* links were about to be broken. 'If you no longer care for us,' said Mukugubvi, 'I shall pay Mabula's parents'; but Khidzi replied, 'What kind of ill-bred woman is that daughter of yours, who is pregnant by a lover, and swears at me by the things inside my trousers. My cattle have provided wives for two of your sons and only 1 of all your sons-in-law have "gates" in your village.' An old man interjected, 'The jealousies of the child are settled by its parents. Khidzi is not responsible. You, Mukugubvi, must *khomelwa*.' A week later Mukugubvi offered a goat of reconciliation. But the *khoro* said, 'No. This goat is *dawa mulodo*. We now want you to bring an ox, because the father of Mabula has come to you often to ask you to *khomelwa* and you refused.' And the father added, 'Yes, I came also to the *khoro* (a distance of eight miles) for eighteen weeks, but you did not turn up. Can I "work" eighteen weeks for merely a goat?'

Mukugubvi consented to pay, but urged that he had a case against Khidzi, who should have prevented the drawn-out proceedings by settling it. That was another matter, said the court, for 'The kidneys of an elephant cannot be harnessed together' (they are, like two cases, too weighty to be dealt with at the same time). We may doubt whether it was wise, in view of the polygon of conflicts, to treat as *dawa mulodo* the goat offered in reconciliation, but in these matters the *khoro* is generally wiser than we are.

692 *Ho khomelwa* and its elaborations lead us to consider the procedure in the *khoro*. The conceptions are interwoven, but a *khoro* trial is regarded as essentially different from the quasi-judicial procedures. It is public, unlike *ho khomelwa*, and it starts with *ho galela* (a formal complaint to an officer of the court); there are 'opening' and 'closing' fees and compensation or restitution (*mulofo*); and the constitution of the *khoro* is not based on alinements of interested parties. Before *ho galela*, there is no *khoro* case; the matter is private. *Ho rola*, privately to ask a debtor to pay, precedes but does not necessarily lead to *ho galela*; it may end in *ho khomelwa*. But *khoro* trials and settlement in the family or by reconciliation out of court do not differ from one another as regards the sanction of force; both rely upon consent. Because the *khoro* is public, contempt of its authority may be punished, but the humiliation of the offender is a means rather of inducing him to consent than of enforcing a judgement; we have never seen it applied as an alternative to paying the

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fine or making the restitution. The great feature of the *khoro* is its publicity. It constitutes a large part of the public life of the men and, while it lives as an institution, it will powerfully counteract the sense of frustration resulting from the intervention of the white man.

The *khoro* is the final safeguard of the *munyualo* system and, through that system, of the intricate social structure. It also deals with witchcraft, theft, assault, adultery, and other disputes; but its province in witchcraft and sorcery is limited and has only recently developed, theft and adultery do not lend themselves to its genius, and other cases are primarily to be settled by *ku khumchua*. Of all disputes coming before the *khoro*, 76 per cent. are *munyualo* cases, but if we consider only the disputes that are really submitted to trial and not merely for confirmation or registration of a decision otherwise reached, the percentage rises to 88. Yet the chief subject of litigation is *munyualo* only if we ignore completely the conflicts that are settled by *ku khumchua* or in the family. In our opinion, though by the nature of the case the evidence can never be complete, these latter cases outnumber *khoro* cases to the same extent as *munyualo* cases outnumber all other cases of the *khoro*.

Of the many implications of these facts, we shall refer merely to two. First of all, contrary to what is often stated concerning the Bantu, it is not that most conflicts in the society arise from *munyualo*, but that, of the disputes having, as we phrase it, legal consequences, none are more in evidence than *munyualo* tangles. But as the *khoro* is really a *munyualo* court, we cannot argue from the litigation we find in it to the general nature of the conflicts in the society. The error is somewhat like concluding from cases coming before special divorce courts among us, that marital disputes are the main causes of dissension in our society. *Khoro* proceedings are essentially *munyualo* proceedings because the complex *munyualo* system, and the safeguarding of its intricate reciprocities, can adequately be entrusted, not to private arrangements, but to an imposing public organization. The stresses and strains in the system are not only of a personal but of an institutional nature, involving the integration of diverse elements in the social structure. Compromises affect individuals as well as larger groups and their interrelations, and, for the solutions required, the society needs the wide perspective and wisdom of a trained body of men. They have to adjust personal difficulties, but in the context of an intricate system that is easily thrown out of gear. Herein also lies the special genius of the *khoro*.

Secondly, legal arrangements appear to be made and controlled by men, but that is because we identify law with the *khoro*, the place of the men. In *ku khumchua* women are at least as important as men, and in family disputes no one occupies so pivotal a position as the cattle-linked sister, the legal 'builder' of most houses in the country, she who 'cuts' cases arising within the house and regulates the inheritance of goods and of widows. These 'judicial'-like activities cover vast provinces of the total culture, and they are fully recognized in *khoro* proceedings in which neither in arriving at a decision nor in safeguarding its execution can the men ignore the wishes, authority, or influence of the sister. In complicated cases, they often postpone their decision again and again until she

[See ch. 582 + 583 — Analysis]